

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:)	Chapter 11 Case No. 20-10334-TPA
)	RELATED TO DOCUMENT NO. 294
JOSEPH MARTIN THOMAS,)	
Debtor.)	

In re:)	Chapter 11 Case No. 21-10118-TPA
)	RELATED TO DOCUMENT NO. 28
2374 VILLAGE COMMON DRIVE, LLC,)	
Debtor.)	

JOSEPH MARTIN THOMAS, and 2374
VILLAGE COMMON DRIVE, LLC,
Movants,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; UNITED STATES OF
AMERICA, SMALL BUSINESS
ADMINISTRATION; ERIE COUNTY
TAX CLAIM BUREAU; MILLCREEK
TOWNSHIP TAX COLLECTOR;
UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE;
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
REVENUE; TIAA COMMERCIAL
FINANCE, INC.; NORTHWEST
SAVINGS BANK, NOW KNOWN AS
NORTHWEST BANK; CORE ERIE
MOB, L.P.; and JOSEPH C. KRAMER,
Respondents.

**ORDER DENYING PRIVATE SALE OF PROPERTY AND CONFIRMING PUBLIC SALE
OF PROPERTY FREE AND DIVESTED OF LIENS**

AND NOW, this ____ of May, 2021, on consideration of the *Debtors' Joint Motion for Order Approving Sale of Real Estate Free and Divested of Liens ("Motion")*, filed at Document No. 294 in the case of *Joseph Martin Thomas, No. 20-10334 TPA* and Document No. 28 in the case of *2374 Village Common Drive LLC, No. 21-10118 TPA*, to Joseph C. Kramer, an adult individual with a mailing address of PO Box 8263, Erie, Pennsylvania 16505, for \$3,150,000, after hearing held in the Bankruptcy Courtroom, U.S. Courthouse, 17 South Park Row, Erie, PA 16501, this date, the Court finds:

1. That said Motion is hereby DENIED as a result of another interested party, Wells Fargo Bank, N.A., a financial institution with a mailing address c/of Steven Treadway, 1620 Roseville Parkway, 1st Floor, Suite 100, MAC AI792-018, Roseville, CA 95661, making a higher and better offer at the hearing on said sale by bidding-in a portion of its secured claim against the property to be sold, and the Motion for Private Sale was thus converted to a Public Auction Sale. Wells Fargo Bank, N.A. is sometimes herein referred to as the "Purchaser".
2. That service of the *Notice of Hearing* and *Order* setting hearing on said *Motion* for private sale of real and personal property free and divested of liens of the above-named Respondents, was effected on the following secured creditors whose liens are recited in said *Motion* for private sale, viz:

DATE OF SERVICE

NAME OF LIENOR AND SECURITY

March 16, 2021

Office of the United States Trustee
Liberty Center
1001 Liberty Avenue, Suite 970
Pittsburgh, PA 15222

March 16, 2021

Wells Fargo Bank, N.A. c/of Steven Treadway
1620 Roseville Parkway, 1st Floor
Suite 100, MAC AI792-018
Roseville, CA 95661

(Mortgage Liens)

March 16, 2021

Wells Fargo Bank, National Association
4101 Wiseman Blvd.
Building 307
San Antonio, TX 78251

(Mortgage Liens)

March 16, 2021

Salene Mazur Kraemer, Esquire
Bernstein-Burkley PC
707 Grant Street, Suite 2200
Gulf Tower
Pittsburgh, PA 15219

Counsel for Wells Fargo Bank, National Association

<u>DATE OF SERVICE</u>	<u>NAME OF LIENOR AND SECURITY</u>
March 16, 2021	United States of America Small Business Administration 660 American Avenue, Suite 301 King of Prussia, PA 19406 (Mortgage Lien)
March 16, 2021	Anthony K. Arroyo, Esquire District Counsel, Small Business Administration 660 American Avenue Suite 301 King of Prussia, PA 19406 (Counsel for USA, SBA)
March 16, 2021	Tami Perriello, Acting SBA Administrator U.S. Small Business Administration 409 Third Street SW Washington, DC 20024 (Mortgage Lien)
March 16, 2021	Major Clark, Acting Chief Counsel U.S. Small Business Administration 409 Third Street SW Washington, DC 20024 (Mortgage Lien)
March 16, 2021	Peggy Delinois Hamilton, General Counsel Office of General Counsel U.S. Small Business Administration 409 Third Street SW Washington, DC 20024 (Mortgage Lien)

DATE OF SERVICE

NAME OF LIENOR AND SECURITY

March 16, 2021

Nina Levine
Deputy General Counsel
U.S. Small Business Administration
409 Third Street SW
Washington, DC 20024

(Mortgage Lien)

March 16, 2021

Attorney General of the United States
U.S. Dept. of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

(On behalf of the Internal Revenue Service/Federal Tax Liens
and U.S. Small Business Administration/Mortgage Lien)

March 16, 2021

United States Attorney's Office
Western District of Pennsylvania
ATTENTION: Civil Process Clerk
Joseph F. Weis, Jr. U.S. Courthouse
700 Grant Street
Suite 4000
Pittsburgh, PA 15219

(On behalf of the Internal Revenue Service/Federal Tax Liens
and U.S. Small Business Administration/Mortgage Lien)

March 16, 2021

United States Attorney's Office
Western District of Pennsylvania
ATTENTION: Civil Process Clerk
17 South Park Road, Suite A330
Erie, PA 16501

(On behalf of the Internal Revenue Service/Federal Tax Liens
and U.S. Small Business Administration/Mortgage Lien)

March 16, 2021

Stephen R. Kaufman, Esquire
Acting U.S. Attorney for the Western District of PA
Joseph F. Weis, Jr. U.S. Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219

(On behalf of the Internal Revenue Service/Federal Tax Liens
and U.S. Small Business Administration/Mortgage Lien)

<u>DATE OF SERVICE</u>	<u>NAME OF LIENOR AND SECURITY</u>
March 16, 2021	Internal Revenue Service ATTENTION: Centralized Insolvency Operations P.O. Box 7346 Philadelphia, PA 19101-7346 (Federal Tax Liens)
March 16, 2021	Internal Revenue Service 1000 Liberty Avenue Stop 711B Pittsburgh, PA 15222-3714 (Federal Tax Liens)
March 16, 2021	United States Internal Revenue Service Special Procedures Division P.O. Box 628 Bankruptcy Section Pittsburgh, PA 15230 (Federal Tax Liens)
March 16, 2021	Jill L. Locnikar, Esquire U.S. Attorney's Office 700 Grant Street, Suite 4000 Pittsburgh, PA 15219 (On behalf of the Internal Revenue Service/Federal Tax Liens and U.S. Small Business Administration/Mortgage Lien)
March 16, 2021	Pa. Dept. of Revenue Bankruptcy Division P.O. Box 280946 Harrisburg, PA 17128-0946 (State Tax Liens)
March 16, 2021	Pa. Dept. of Revenue 4 th & Walnut Street Harrisburg, PA 17128 (State Tax Liens)

<u>DATE OF SERVICE</u>	<u>NAME OF LIENOR AND SECURITY</u>
March 16, 2021	Attorney General of Pennsylvania Western Regional Office 1251 Waterfront Place Mezzanine Level Pittsburgh, PA 15222 (On behalf of the Pa. Dept. of Revenue – State Tax Liens)
March 16, 2021	Erie County Tax Claim Bureau Erie County Courthouse 140 West Sixth Street, Room 110 Erie, PA 16501 (Statutory Lien for Real Estate Taxes)
March 16, 2021	Millcreek Township Tax Collector 3608 West 26 th Street Erie, PA 16506 (Statutory Lien for Real Estate Taxes)
March 16, 2021	Core Erie MOB, L.P. 1515 Lake Shore Drive Suite 225 Columbus, OH 43204 (Memorandum of Option (terminated))
March 16, 2021	Northwest Savings Bank, now Northwest Bank 100 Liberty Street Drawer 128 Warren, PA 16365-0128 (Mortgage (satisfied))
March 16, 2021	TIAA Commercial Finance, Inc. 390 S. Woods Mill Road, Suite 300 Chesterfield, MO 63017 (Right of Replevin)

DATE OF SERVICE

NAME OF LIENOR AND SECURITY

March 16, 2021

Michael F.J. Romano, Esquire
Romano, Garubo, & Argentieri
P.O. Box 456
52 Newton Avenue
Woodbury, NJ 08096

(Counsel to TIAA Commercial Finance, Inc.)

March 26, 2021

Core Erie MOB LP
c/of Christopher M. Montgomery Esquire
Frost Brown Todd LLC
One Columbus Center
10 West Broad Street, Suite 2300
Columbus, OH 43215-3484

March 26, 2021

Core Erie MOB LP
c/of CT Corporation System
600 North 2nd Street
Suite 401
Harrisburg, PA 17101

1. That sufficient general notice of said hearing and sale, together with the confirmation hearing thereon, was given to the creditors and parties in interest by the moving party as shown by the certificate of service duly filed and that the named parties were duly served with the Motion.

2. The said sale hearing was duly advertised on the Court's website pursuant to *W.P.A LBR 6004-1(c)(2)* on March 16, 2021; , in the *Erie Times News* on April 5, 2021; the *Erie County Legal Journal* on April 9, 2021, the *Cleveland Plain Dealer* on April 5, 2021; the *Buffalo News* on April 5, 2021; and the *Pittsburgh Post-Gazette* on April 8, 2021 as shown by Proofs of Publication duly filed.

3. That Wells Fargo is fully secured and therefore adequately protected by the value of, *inter alia*, the real property to be sold and the cash collateral on hand with the Debtors (namely Tri-State Pain Institute, LLC¹; Joseph Martin Thomas; and 2374 Village Common Drive, LLC) in each of their bank accounts.

4. That this Court, therefore, overruled Wells Fargo's objection to Motion.

¹ Tri-State Pain, LLC ("Tri-State Pain") is an affiliate of the above-captioned debtors, having filed its own Chapter 11 Case in this Court at Bankruptcy Case No. 20-10049-TPA. Tri-State Pain, Joseph Martin Thomas, and 2374 Village Common Drive, LLC shall hereinafter be referred to as the "Debtors").

5. To the extent Wells Fargo is not adequately protected, it shall be entitled to a superpriority administrative claim for the difference pursuant to 11 U.S.C. § 507 subject to further order of this Court.

6. That at the sale hearing the highest/best offer received was that of Wells Fargo, N.A., as a credit bid and no objections to the sale were made which would result in cancellation of said sale.

7. That the credit bid of \$3,370,000 offered by Wells Fargo Bank, N.A., was a full and fair price for the property in question.

8. That prior and during the Auction, the Purchaser agreed to up to a \$100,000 carve-out of sale proceeds for the payment of Court-approved administrative expense claims for professional counsel's fees and expenses of the estates (namely Tri-State Pain Institute, LLC; Joseph Martin Thomas; and 2374 Village Common Drive, LLC) if there was a third party buyer.

9. That since there are no actual sale proceeds since the winning bid was a credit bid, the Purchaser has agreed that up to \$100,000 of its cash collateral currently on hand with the Debtors to be used for the payment of Court-approved, administrative expense claims for fees and expenses of the Debtors (namely Tri-State Pain Institute, LLC; Joseph Martin Thomas; and 2374 Village Common Drive, LLC) solely related to the within sale in accordance with 11 U.S.C. § 506(c) as a surcharge;

10. The Purchaser has acted in good faith with respect to the within sale in accordance with *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir. 1986).

NOW THEREFORE, and in considering of the foregoing findings of fact, it is hereby **ORDERED, ADJUDGED and DECREED** that the sale by Special Warranty Deed of the real property described as:

a) Real estate and improvements located at 2374 Village Common Drive, Erie, PA 16506, Tax Index No. 33-123-418.0-034.00 owned by 2374 Village Common Drive, LLC, and,

b) Real estate located at Lot 15 Village Common Drive, Erie, PA 16506, Tax Index No. 33-123-418.0-034.01 owned by Joseph Martin Thomas. [IS LOT 16 ALSO INCLUDED?]

is hereby CONVEYED to Wells Fargo Bank, N.A., c/o Steven Treadway, 1620 Roseville Parkway, 1st Floor, Suite 100, MAC AI792-018, Roseville, CA 95661, for \$3,370,000, free and divested of the above recited liens and claims, and, that the Movants are authorized to make, execute, and deliver to the Purchaser above-named the necessary deed and/or other documents required to transfer title to the property purchased upon compliance with the terms of sale;

It is FURTHER ORDERED that the Wells Fargo has designated the name and address of the following entity which shall be listed as the grantee or buyer on the Special Warranty Deed:

GRANTEE/BUYER:

Redus Properties, Inc.

1 Independent Drive, 8th Floor-Suite 810

Jacksonville, FL 32202;

It is FURTHER ORDERED that the above recited liens and claims, be, and they hereby are, transferred to the proceeds of sale, if and to the extent they may be determined to be valid liens against the sold property, and that the within decreed sale shall be free, clear, and divested of said liens and claims;

It is **FURTHER ORDERED** that the sale of 2374 Village Common Drive, Erie, PA 16506, Tax Index No. 33-123-418.0-034.00 owned by 2374 Village Common Drive, LLC at the allocated purchase price of \$3,170,000 is made pursuant to the confirmation of 2374 Village Common Drive, LLC's Chapter 11 Plan of Orderly Liquidation dated March 5, 2021, which was confirmed by Order of Court dated April 28, 2021. Therefore, in accordance with 11 U.S.C. § 1146(a), the sale of the above-referenced parcel is exempt from taxation under any laws imposing a stamp tax, state or local transfer tax, or similar tax; provided however that, to the extent any taxing authority claims such Sale is not exempt from taxation under any laws imposing a stamp tax, state or local transfer tax, or similar tax, such party must file a written objection with the Bankruptcy Court within fourteen (14) days of the entry of this Order. If a timely objection is filed, then the Court will hold a hearing and decide the Section 1146(a) stamp tax issue de novo. If no such objection is timely filed, then the exemptions provided for in this paragraph shall be allowed and final.

It is **FURTHER ORDERED** that the following expenses/costs shall immediately be paid at the time of closing. *Failure of the Closing Agent to timely make and forward the disbursements required by this Order will subject the Closing Agent to monetary sanctions*, including among other things, a fine or the imposition of damages, after notice and hearing, for failure to comply with the above terms of this *Order*. Except as to the distribution specifically authorized herein, all remaining funds shall be held by Counsel for the Movant pending further Order of this Court after notice and hearing.

[CONTINUED ON FOLLOWING PAGE]

2374 VILLAGE COMMON DRIVE LLC
CASE NO. 21-10118 TPA

The sum of \$3,170,000 is allocated as the purchase price for the real estate located at 2374 Village Common Drive, Erie, Pennsylvania owned by 2374 Village Common Drive LLC. Since the Purchaser's winning bid is a credit bid, there are no actual funds realized from the within sale. Accordingly the following disbursements shall be made from Wells' Fargo's cash collateral on hand with the Debtors:

1. Delinquent real estate taxes payable to the Erie County Tax Claim Bureau in the approximate amount of \$588,881.94, plus interest at the rate of 9% per annum from March 31, 2021 from Wells' Fargo's cash collateral on hand with the Debtors
2. Current real estate taxes, due and payable to the Millcreek Township Tax Collector pro-rated to the date of closing from Wells' Fargo's cash collateral on hand with the Debtors;
3. The court-approved commission payable to Coldwell Banker Select Realtors in the amount of \$5,000 from Wells' Fargo's cash collateral on hand with the Debtors as part of the surcharge claim;
4. The costs of newspaper advertising in the following amounts: *Erie Times News*: \$175.10; *Pittsburgh Post-Gazette*: \$341.00; *The Buffalo News*: \$494.00; and *The Cleveland Plain Dealer*: \$382.72, for a total of \$1,392.82 shall be reimbursed to The Quinn Law Firm from Wells' Fargo's cash collateral on hand with the Debtors as part of the surcharge claim;
5. The costs of legal journal advertising in the amount of \$105.00 shall be reimbursed to the Quinn Law Firm from Wells' Fargo's cash collateral on hand with the Debtors as part of the surcharge claim;
6. Reimbursement to the Quinn Law Firm of the filing fee for the Motion for Order Approving Sale of Real Estate Free and Divested of Liens in the amount of \$188.00 from Wells' Fargo's cash collateral on hand with the Debtors as part of the surcharge claim;
7. The sum of \$100,000 referenced in Paragraph 9 in the above findings of fact shall be paid from Wells Fargo's cash collateral to the Quinn Law Firm, to be held in its escrow account, on account of the payment of Court-approved, administrative expense claims for Debtors' (namely Tri-State Pain Institute, LLC; Joseph Martin Thomas; and 2374 Village Common Drive, LLC) fees and expenses related to the within sale in accordance with 11 U.S.C. § 506(c) as a surcharge, including fees related to services rendered to consummate the closing; any remaining funds after appropriate surcharge will be paid to Wells Fargo.

8. Any and all municipal fees, as well as any and all water and sewer charges, if applicable, shall be paid at the time of the closing from Wells' Fargo's cash collateral on hand with the Debtors.
9. The sum of \$31,700.00 shall be paid to the Office of the United States Trustee on account of quarterly U.S. Trustee's fees due in regard to the disbursements made at the time of the real estate closing from Wells' Fargo's cash collateral on hand with the Debtors.

LOT 15, VILLAGE COMMON DRIVE, ERIE, PENNSYLVANIA
TAX INDEX NO. 33-123-418.0-034.01

The sum of \$200,000 is allocated as the purchase price for the real estate located at Lot 15, Village Common Drive, Erie, Pennsylvania, Tax Index No. 33-123-418.0-034.01 owned by Joseph Martin Thomas. Since the Purchaser's winning bid is a credit bid, there are no actual funds realized from the within sale. Accordingly the following disbursements shall be made:

1. Delinquent real estate taxes payable to the Erie County Tax Claim Bureau in the approximate amount of \$4,917.22, plus interest at the rate of 9% per annum from March 31, 2021, from Wells' Fargo's cash collateral on hand with the Debtors.
2. Current real estate taxes, due and payable to the Millcreek Township Tax Collector pro-rated to the date of closing from Wells' Fargo's cash collateral on hand with the Debtors.
3. Transfer Taxes shall be paid in accordance with the findings set forth on the record at the hearing on the Motion for Private Sale of Real Property Free and Divested of Liens. Debtor is to pay one-half (½) and Wells Fargo, N.A. is to pay one-half (½) of the transfer taxes due and owing, which equal 2% of the purchase price or \$2,000.00 from Wells' Fargo's cash collateral on hand with the Debtors.
4. The court-approved commission payable to Coldwell Banker Select Realtors in the amount of \$12,000 shall be paid from Wells' Fargo's \$100,000 carve-out referenced above in Paragraph 7 of this Order for professionals' fees in accordance with 11 U.S.C. § 506(c) as part of the surcharge claim.
5. Reimbursement to the Quinn Law Firm of the filing fee for the Motion for Order Approving Sale of Real Estate Free and Divested of Liens in the amount of \$188.00 from Wells' Fargo's cash collateral on hand with the Debtors as part of the surcharge claim.
6. Any and all municipal fees, as well as any and all water and sewer charges, if applicable, shall be paid at the time of the closing from Wells' Fargo's cash collateral on hand with the Debtors.

7. The sum of \$1,300.00 shall be paid to the Office of the U.S. Trustee on account of the quarterly fees due in regard to the disbursements made at the time of the real estate closing from Wells' Fargo's cash collateral on hand with the Debtors.

It is **FURTHER ORDERED** that:

1. **Within seven (7) days of the date of this Order**, the Movants shall serve a copy of the within Order on each Respondent (i.e. each party against whom relief is sought) and its attorney of record, if any, upon any attorney or party who answered the motion or appeared at the hearing, the attorney for the Debtor, the Closing Agent, the Purchaser, and the attorney for the Purchaser, if any, and file a certificate of service.
2. **Closing shall occur within thirty (30) days of this Order.** The Debtors shall cooperate fully with Wells Fargo in order to facilitate a timely Closing and sign any and all other documents and take such actions as reasonably necessary to carry out the spirit and intent of this Sale.
3. **Within seven (7) days following closing**, the Movants shall file a Report of Sale which shall include a copy of the HUD-1 or other Settlement Statement; and,
4. This Sale Confirmation Order survives any dismissal or conversion of the within cases.

Thomas P. Agresti, Judge
United States Bankruptcy Court

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